

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Central Illinois Public Service Company)	
(AmerenCIPS) and)	
)	
Union Electric Company)	
(AmerenUE))	
)	
Application for entry of protective order to)	
protect confidentiality of materials submitted)	
in support of revised gas service tariffs.)	
)	
Central Illinois Public Service Company)	Docket Nos. 02-0798, 03-0008, 03-0009
)	(Cons.)
Proposed general increase in natural)	
gas rates. (Tariffs filed November 27, 2002))	
)	
Union Electric Company)	
Proposed general increase in natural gas rates.)	
)	
(Tariffs filed November 27, 2002)		

**BRIEF OF
THE PEOPLE OF THE STATE OF ILLINOIS**

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BRIEF OF THE PEOPLE
OF THE STATE OF ILLINOIS

The People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois (“the People”) submit the following Initial Brief in response to requests by the Central Illinois Public Service Company (“CIPS”) and the Union Electric Company (“UE”) (collectively as “CIPS/UE”) for an increase in their natural gas rates. Both CIPS and UE are part of the Ameren Company. CIPS’ request will increase a typical residential gas customer’s bill by 23.6%. UE’s request will increase a typical residential gas customer’s bill by 25.1%.¹

INTRODUCTION

I. Background; Procedural History; Nature of Operations; Test Year

CIPS provides natural gas service to approximately 170,000 customers in Central and Southern Illinois. UE provides natural gas service to approximately 18,000 customers in Alton, Illinois and in the immediate vicinity. Both CIPS and UE filed tariffs requesting increases in their natural gas service rates on November 27, 2002. CIPS requested a \$16,707,000 increase, which results in a 30.3% increase in base rate revenue, and an 8.7% increase in overall revenue, including purchased gas revenue. UE requested a \$3,804,000 increase in overall revenue, which results in a 73.4% increase in base rate revenue, and a 21.7% increase in overall revenue, including purchased gas revenue. Both companies selected an historical test year ending June 30, 2001 pursuant to Commission

¹ Typical Bill: (From CIPS’ and UE’s schedules E-6 line 5 – weather normalized class average) using the following assumptions:

- Annual charge: \$685.33
- Therms used: 847

rule Part 285.150. 83 Ill. Adm. Code 258.150. CIPS Ex. 1.0 at 3-4; UE Ex. 1.0 at 3-4. CIPS and UE each submitted testimony of the same 10 witnesses in support of their requested increases. The People submitted Direct and Rebuttal testimony of David J. Effron, an expert in regulatory accounting. The Staff of the Illinois Commerce Commission (“Staff”) submitted the accounting testimony of Burma C. Jones, Carolyn Bowers, and Teresa Ebrey. Staff, the Citizens Utility Board (“CUB”), Business Energy Alliance and Resources (“BEAR”), representing grain elevator operators, filed additional testimony addressing rate design and cost allocation issues.

In this initial brief, the People will present arguments concerning rate base and operating revenue and expenses in the format requested by the Administrative Law Judges on July 10, 2003. Tr. at 619-620. These arguments will address the following accounting issues:

- Post test year plant additions
- Cash working capital amount
- Accumulated deferred income tax
- Uncollectible accounts expense
- Retirement plan amortization time period and resulting expense
- Pension and OPEB expense
- Incentive compensation plan expenses
- Metering system upgrade expenses
- Rate case expenses.

The People will also comment on issues raised by Staff witnesses, particularly as they relate to accounting adjustments proposed by the People’s witness David Effron.

The People’s lack of commentary on any issue in this case should not be interpreted to mean that the People agree with CIPS/UE’s position for that issue. The People are not advancing a position on appropriate rates of return for CIPS and UE. Consequently, the People have not synthesized their recommendations on individual

issues into an overall revenue requirements recommendation, for which a rate of return figure would be necessary.

II. Rate Base

A. Introduction

B. Uncontested Issues

C. Contested Issues

1. Post-test year capital additions

a. CIPS and UE distort their revenue requirements by presenting gross plant in service figures that do not reflect corresponding depreciation.

Both CIPS and UE seek to recognize post test year plant additions² without recognizing post test year increases in the depreciation reserve. The record demonstrates that historically, for both CIPS and UE, post test year plant additions are approximately offset by increases in the depreciation reserve. AG Ex. 1.0P CIPS at 5; AG Ex. 1.0P UE at 6; AG Ex. 1.1 at 4-5. If CIPS and UE are allowed to recognize post test-year plant additions without recognizing the corresponding increases in depreciation reserve, the resulting rate base will be overstated and inaccurate.

The People recommend eliminating CIPS' post test year plant adjustment since the accumulated reserve for depreciation and amortization will have grown by \$8,263,000 (less the effect of any retirements and net cost of removal) from the end of the test year to June 30, 2003, (AG Exhibit 1.1 at 4) and this accumulated reserve will likely offset the post test year plant additions. UE's gross plant in service as of December 31, 2002 was \$1,420,000 less than the pro forma distribution plant in service provided by UE for the end of the test year. UE's accumulated reserve for depreciation as of December

² CIPS seeks to add \$2,291,000 in post test year plant additions. UE seeks to add \$2,258,000.

31, 2002 was \$53,000 greater than the accumulated reserve for depreciation on distribution plant for the end of the test year reflected in UE's rate case filing. AG Ex. 1.0P UE at 6. Accordingly, the People recommend reducing UE's pro forma net plant in service by \$1,473,000, which would properly reflect the net plant in service as of December 31, 2002.

b. Net plant in service has decreased slightly over the past five years for UE and has remained almost level for CIPS.

Mr. Effron's testimony, and cross examination of CIPS/UE witness Opich demonstrate that the growth in accumulated depreciation associated with embedded, or existing, plant in service will more than offset the increase in plant in service identified by the Company. The net plant in service for CIPS remained nearly identical from June 30, 2002 through December 31, 2002. Tr. at 273. CIPS net plant in service declined in 2000 and 2001. Tr. at 271. The following table, taken from AG Cross Ex. 1, shows the relatively stable level of plant in service over the last five years for CIPS:

CIPS Net Plant in Service (\$000)

	December 31, 1997	December 31, 1998	December 31, 1999	December 31, 2000	December 31, 2001
Gross Plant, including embedded plant	\$249,499.00	\$259,656.00	\$267,909.00	\$273,573.00	\$279,815.00
Depreciation Reserve	\$102,719.00	\$108,258.00	\$116,097.00	\$122,204.00	\$128,679.00
Net Plant in Service	\$146,780.00	\$151,398.00	\$151,812.00	\$151,369.00	\$151,136.00

AG Cross Ex. 1.0. As this table demonstrates, CIPS' net plant in service has decreased each year since 1999, despite additional plant investment. Adding post test year plant

additions to rate base without subtracting the depreciation reserve resulting from existing plant will distort the test year plant in service amount upward. As AG Cross Ex. 1.0 demonstrates, considering gross, rather than net plant in service presents an inaccurate determination of rate base, and CIPS/UE witness Opich agreed that it would not be appropriate to make an adjustment to rate base that presents an inaccurate determination of rate base. Tr. at 270.

c. Commission rules require post-test year adjustments to reflect all significant known and measurable changes in the operating results of the test year.

CIPS' and UE's arguments to include significant post test year plant additions in their respective rate base requests are one sided and misleading. Their proposal applies Commission rule 285.150(e), the rule that permits post test year adjustments, selectively, by presenting gross rather than net plant in service figures. The gross plant in service figures presented by the companies do not account for the significant percentage of plant in service offset by depreciation in every year.

CIPS/UE witness Opich testified that it was his understanding of the Commission's test year rule (285.160(e)) that the rule allows adjustment to an historic test year rate base for post test year changes that increase revenue, but does not allow for post test year changes that decrease revenue requirements. Tr. at 276. Section 285.150(e) requires that adjustments for known and measurable changes be comprehensive and include all effects of the change. The rule reads as follows:

e) Adjustments. A utility may propose pro forma adjustments (estimated or calculated adjustments made in the same context and format that the affected information was provided) to the selected Historical or Current Test year for all known and measurable changes in the operating results of the Test Year. These adjustments shall reflect significant changes (changes

affecting the ratepayers) in plant investment, operating revenues, expenses and capital structure where such changes occurred during the selected Historical or Current Test Year or are reasonably certain to occur subsequent to the selected Test Year within 12 months from the filing date of the tariffs and the amount of the changes are determinable. Attrition or inflation factors shall not substitute for a particularized study of individual capital, revenue and expense components. Any proposed known and measurable adjustment to the Test Year shall be individually identified and supported in the direct testimony of the utility. Each adjustment shall be submitted in accordance with the Standard Filing Requirements' Schedules.

83 Ill. Adm. Code 285.150(e). (emphasis added) The rule expects that all the consequences and effects of a known and measurable change on all aspects of the revenue requirement be considered.

CIPS and UE have attempted to isolate one cost item – an increase in plant in service and rate base – while ignoring other aspects of the change that are certain to occur (i.e. the effect of accumulated depreciation) and that affect the Company's revenue requirement. Mr. Effron demonstrated that the balance of accumulated depreciation is known and measurable, and that by December 31, 2002 the accumulated reserve for depreciation will offset the effect of any post-test year growth in plant in service. AG Ex. 1.1 at 4. In other words, he demonstrated that when the increase in plant that CIPS and UE recommend is considered in light of other relevant changes in plant investment and operating expenses during the post-test year period, no increase in rate base is needed. As Mr. Effron stated: "It would be internally inconsistent to recognize the effect on rate base of post-test year additions to plant in service without also recognizing the effect of post-test year increases in the accumulated reserve for depreciation." AG Ex. 1.1 at 6.

CIPS / UE witness Opich argued that recognizing the effect of accumulated depreciation on net plant would turn a historic test year into a future test year. CIPS/UE Ex. 27.0 at 3. While it is not the Intervenor's position that the CIPS / UE rate case should be based on a future test year, Mr. Opich's argument does bring into sharp focus the balanced nature of the test year method and the fact that any adjustment to the test year must reflect that balance. To the extent that recognizing the effect of accumulated depreciation fairly considers the effect of the post-test year investment on the Company's overall plant investment, operating revenues, and expenses, it attempts to balance a known and measurable change to plant investment adjustment with other "significant changes" related to that adjustment. This is required by the rule. 83 Ill. Adm. Code 285.150(e). Any post-test year adjustment must fairly consider all effects of the adjustment, consistent with the principles of fairness and completeness that underlie the test year rule.

d. Prior Commission orders have required that when a post test year plant adjustment is made, corresponding adjustments must also be made.

In ICC Docket 01-0432, where the utility requested an adjustment for "known and measurable" changes to rate base, the utility specifically included the effect of accumulated depreciation and accumulated deferred income taxes on the plant addition adjustment. The Staff agreed with that adjustment, and it was incorporated into the Commission's order. ICC Docket 01- 0432, Order at 18-20 (March 28, 2002). CIPS and UE, by contrast, have not made the necessary adjustments to other accounts that come with the proposed post test year plant additions. Consequently, their pro forma adjustments should be rejected.

2. Cash working capital allowance

The cash working capital (“CWC”) amount proposed by CIPS and UE is inflated because it reflects large PGA under-collections during the test year. The record demonstrates that absent some bias in the PGA recovery, under-recovery and over-recovery of PGA revenue should cancel each other out. AG Ex. 1.0P CIPS at 8; AG Ex. 1.0P UE at 8; AG Ex. 1.1 at 2. Since PGA under and over recoveries will cancel out over time, building a CWC amount into the expenses that CIPS and UE recover from ratepayers each year will result in ratepayers paying for an unnecessary expense. The People recommend that CIPS/UE’s CWC expense be calculated using a PGA revenue lag time identical to the lag time used for base rate revenues. CIPS and UE propose greater lag times for PGA revenues than are used for base rate revenues. The People’s recommendation eliminates CIPS’ CWC requirement, and reduces UE’s by \$557,000.

During the test year, the level of PGA under collection for several months was disproportionately high as compared to other time periods near the test year. See AG Cross Exhibit 5. Unless there is some bias in the PGA collection mechanism, such under collection is just as likely to occur with the PGA true up as is over collection. AG Ex. 1.0P CIPS at 8; AG Ex. 1.0P UE at 8; AG Ex. 1.1 at 2. CIPS/UE witness Opich stated on cross examination that his analysis of CWC issues and revenue lag was limited to the test year. Tr. at 331. But as AG Cross Ex. 5 demonstrates, and as CIPS/UE witness Opich agreed, during an eleven month period adjacent to the test year, PGA under and over recoveries for UE were nearly identical, with over and under recovery months mixed together, and with a net difference of only \$177,480 dollars. Tr. at 330. Therefore, if the CWC were calculated from the PGA true-up during this eleven month period, the CWC requirement would be either minimal or non-existent since the true-ups from months

where over collection occurred would offset true-ups from months where there were under collections. Consequently, the Commission should use the lag times recommended by the People in order to more accurately reflect the long-term effects of PGA collections.

3. Materials and supplies

4. Working gas in storage

5. Accumulated deferred income taxes

a. CIPS and UE seek to include non-rate base items in the ADIT amount used to determine rate base.

CIPS and UE propose accumulated deferred income tax (“ADIT”) treatment that would result in non-rate base charges, credits, and liabilities causing rate base increases.

Any ADIT component corresponds to company income or expenses. CIPS/UE Ex. 14.0 at 6. Some company income or expenses are part of rate base. Others are not.

CIPS/UE’s proposed ADIT treatment would include all ADIT components in rate base, regardless of whether their corresponding income or expenses were in rate base, resulting in rate base increases from non-rate base items. The People recommend that ADIT components not corresponding to rate base³ be removed from CIPS’ and UE’s proposed ADIT adjustment. The net effect of the People’s ADIT recommendation is to decrease

³ The People recommend removing the following items from CIPS’ proposed ADIT: deferred tax balance related to pensions, accrued liability for post retirement benefits other than pensions (“OPEB”), and deferred tax debit balance related to the accrual for gas site cleanup costs. CIPS has not included the prepaid pensions in rate base and has not deducted the accrued liability for OPEB or the accrued reserve for gas site cleanup cost from rate base. Consequently, ADIT related to these items should not be considered in determining rate base. The People recommend removing the following items from UE’s proposed ADIT: deferred taxes related to pension expense accrual that is not deductible for income tax purposes, net deferred tax debit balance related to the accrued liability for vacation pay, and deferred tax debit balance related to accrual for environmental cleanup costs. UE has not deducted the accrued liability for any of these items from rate base. Consequently, ADIT related to these items should not be considered in determining rate base.

rate base by \$4,060,000 for CIPS and \$341,000 for UE. This reduction to rate base is necessary because if these items were included, rate base would increase as a result of deferred tax from items that are not part of rate base.

b. Prior Commission actions support the People's recommendations with regard to CIPS' and UE's ADIT proposal.

The Commission recently issued an Order that gave itemized rather than “all or nothing” treatment to line items included in ADIT. (ICC Docket No. 01-0423 Final Order at 45) In that Docket, Government and Consumer intervenors (“GCI”) recommended removing a number of components from Commonwealth Edison’s proposed ADIT amount. The Commission accepted five of GCI’s recommendations, but rejected others, leaving the other items in question in Commonwealth Edison’s ADIT amount. This item-by-item consideration of ADIT components runs counter to CIPS’ and UE’s claims that “It has not been the Commission’s practice to determine the components of the deferred tax reserve on an account-by-account basis, (CIPS/UE Exhibit 14 at 8) and that “All deferred tax items should be treated consistently.” CIPS/UE Exhibit 27.0 at 4.

Although CIPS and UE identify a Commission case (ICC Docket 01-0432 Order at 24) in which the Commission treated all ADIT items the same way, in accordance with what they claim to be Commission practice, the fact that the Commission treated all ADIT items in the same manner in ICC Docket 01-0432 is irrelevant in view of the Commission’s rejection of this approach in ICC Docket 01-0423.

c. Prior Commission decisions are not *Res Judicata* on later Commission proceedings.

Furthermore, CIPS' and UE's assertion that the Commission must follow its treatment of ADIT from a prior rate case fails because judicial precedent clearly establishes that Commission decisions are not *res judicata* in later Commission proceedings. The Illinois Supreme Court has addressed this issue stating, "[O]rders [of the Commissions] are not *res judicata* in later proceedings before it." United Cities Gas Co. v. Illinois Commerce Commission, 163 Ill.2d 1, 23, 634 N.E.2d 719, 730, 205 Ill.Dec. 428, 439. *Citing* Mississippi River Fuel Corp. et al. v. Illinois Commerce Commission, 1 Ill. 2d 509, 513, 116 N.E.2d 394, 396. Consequently, the Commission is not bound to maintain consistency with a previous decision in which its ADIT treatment coincided with that sought by CIPS/UE in this case.

d. CIPS and UE's sister company CILCO is proposing item-by-item treatment of its ADIT in a rate case currently before the Commission.

CIPS and UE's sister Ameren company Central Illinois Light Company, ("CILCO") is proposing item-by-item treatment of ADIT components in a rate case currently before the Commission. ICC Docket 02-0837. In that case, CILCO has proposed to eliminate deferred taxes related to coal tar cleanup costs from rate base on the grounds that the deferred costs are not included in rate base.

As the People noted in their rebuttal testimony in this case, "The decision to remove such balances of ADIT should not depend on whether removal increases or decreases rate base, but rather on whether their removal is consistent with the treatment of the items with which the ADIT are associated." AG Exhibit 1.1 at 7. Inconsistent treatment of ADIT by the Ameren Company within its family of utilities further erodes

the credibility of the argument offered by CIPS and UE that the Commission must treat all ADIT items consistently.

6. Retirement of Belle Gent

D. Recommended Rate Base

III. Operating Revenues and Expenses

A. Introduction

B. Uncontested Issues

C. Contested Issues

1. Uncollectible expenses

- a. The uncollectible expense proposed by both CIPS and UE is abnormally high in the test year.**

CIPS proposed an uncollectible expense of \$1,442,000 during the test year. This amount substantially exceeds CIPS' average uncollectible accounts expense from 1998 through 2002 of \$939,000. Similarly, UE charged four times as much to its uncollectible accounts expense during the test year than its average uncollectible charge from 1998 through 2000. AG Ex. 1.0P CIPS at schedule C-2. The People recommend reducing the uncollectible accounts expenses proposed by CIPS and UE because those expenses appear to be abnormally high in the test year. The People agree with Staff's recommended reduction of the uncollectible accounts expense proposed by CIPS by \$455,000. The People recommend reducing the uncollectible expense proposed by UE by \$275,000.

b. The method of calculating uncollectible expenses proposed by the People and by Staff provides a more accurate estimate of uncollectible expenses than the company's proposals.

The People agree with Staff's recommendation that CIPS' uncollectible expense should be calculated by using the average net write-off of uncollectible accounts as a percentage of revenues of the five years 1998 – 2002. AG Ex. 1.1 at 8. The People recommend that the same method be used to calculate UE's uncollectible expense. AG Ex. 1.0P UE at 14; AG Ex. 1.1 at 8. This method of calculating uncollectible accounts expense accurately reflects the level of uncollectible accounts expense that should be built into CIPS' and UE's revenue requirement because it provides an adequate sample size without reaching too far back in time. AG Ex. 1.0P CIPS at 16; AG Ex. 1.0P UE at 14.

c. Contrary to CIPS/UE's assertions in testimony, the methodology used by Staff and the People to calculate the uncollectible expense properly accounts for the gas cost.

CIPS/UE asserts that the methodology proposed by Staff and the People does not properly consider gas costs. CIPS/UE Ex. 27.0 at 4. The record demonstrates, and CIPS/UE witness Opich agrees, that PGA revenues for the test year are an input used in calculating the uncollectible expense. Tr. at 282; AG Ex. 1.1 at 3. By applying the five-year average uncollectible expense to CIPS/UE's total revenue, including PGA revenue, gas costs are considered in setting the uncollectible accounts expense. Since Staff and the People propose to use PGA revenues as an input in the process of calculating the CIPS/UE's uncollectible expense, that expense will rise as PGA revenue rises. Consequently, gas costs, and fluctuations in them, are properly accounted for in the method recommended by Staff and the People.

2. VRP cost recovery

3. Amortization of VRP costs

- a. If the VRP costs are amortized over three years, the program will cost rather than save money.**

The voluntary retirement programs (“VRP”) as proposed by CIPS and UE, would cost, rather than save money. While the companies believe that the costs of amortizing the entire VRP will be matched by the savings realized during that same time period, (Tr. at 318) the companies further assert that the savings anticipated for the VRP will continue indefinitely. In spite of the long-term savings potential of the VRP, the companies insist it is appropriate to recover all VRP costs from ratepayers over a three-year period. Id.

The People recommend that CIPS and UE amortize VRP costs over a ten-year period rather than the three-year period they propose. Amortizing the VRP over a ten-year period would reduce CIPS net annual expenses by \$727,000 and would reduce UE’s net annual expenses by \$100,000.

As CIPS and UE witness Opich agreed during cross-examination, the purpose of CIPS/UE’s VRPs is to reduce expenses. Tr. at 287. Simple arithmetic demonstrates that if VRP costs are amortized over three years, that purpose will not be achieved. Rather, with a three-year amortization period, the VRP will cost CIPS and UE money.

AmerenCIPS Exhibit 27.5 presents adjustments showing the effect of CIPS’ VRP on operating expenses. The following table presents the three adjustments contained on this exhibit that relate directly to CIPS’ VRP:

(2) Decrease labor costs to reflect adjustment for VRP labor savings	(\$1,291,000)
(3) Increase labor expense to reflect adjustments for “backfill” positions for VRP	\$219,000
(4) Increase administrative & general expense to include three year amortization of add’l costs other than labor associated with the VRP	\$1,150,000

The net amount of these three adjustments and savings related to CIPS' VRP is an expense of \$78,000. Tr. at 289. AmerenUE exhibit 27.5 presents similar information for UE. The net of UE's VRP related expenses and credits is a \$15,000 savings. Taken together, CIPS/UE's VRP's will cost the companies \$63,000. A program that costs rather than saves money obviously cannot be considered to achieve CIPS' and UE's stated purpose for having a VRP, which is to reduce expenses.

The largest expense in CIPS' and UE's VRP is the expense related to amortization of the program over three years. AmerenCIPS Exhibit 27.5 at line 6; AmerenUE Exhibit 27.5 at line 6. The People's proposed ten-year amortization period would reduce this expense significantly, resulting in a VRP that saves more money than it costs.

b. Amortizing VRP costs over ten years will match the time period over which VRP benefits will be realized and VRP expenditures will be made.

Amortizing the costs of CIPS' and UE's VRP over ten years rather than three will align the costs of the program with the time period over which VRP expenditures will be made. VRP costs include costs to accelerate benefits paid to employees who take voluntary retirement, and also include enhancements to pension benefits for retiring employees. AG Ex. 1.1 at 4. Consequently, VRP costs do not cease when a former employee is switched from VRP benefits to pensions benefits. Instead, VRP expenditures will continue for employees who leave the VRP and remain on CIPS/UE pensions. These expenditures are likely to continue long after the three year amortization period proposed by the company's ends. Accordingly, a ten-year amortization more

closely matches the time period during which VRP program expenditures are likely to be made.

4. Backfill of VRP positions

5. Pension and benefits expense

- a. CIPS and UE have not demonstrated the reasonableness of the pension and OPEB expense figures they have provided in this proceeding.**

The People recommend disregarding the pension and OPEB expense figures offered by CIPS and UE in this case because CIPS and UE have offered nothing to justify or support the reasonableness of those figures. The figures presented by CIPS and UE represent an increase in pension and OPEB expense from the amounts in CIPS/UE's 2002 actuarial report but they represent nothing more than unsupported conclusions. Disregarding these figures and the increase they represent would reduce CIPS' operations and maintenance expense by \$1,444,000 and would reduce UE's operations and maintenance expense by \$309,000. AG Exhibit 1.0P CIPS at 21-23; AG Exhibit 1.0P UE at 19-20.

- i. The burden of demonstrating the reasonableness of expenses put forward in a rate case lies with the utility offering them.**

Under Illinois law, the mere presentation of costs by a utility in a rate case before the ICC does not constitute a presumption that those costs are reasonable. People ex rel. Hartigan v. ICC, 510 N.E.2d 865 (Commission allowance of costs based on presumption of reasonableness of costs filed by utility remanded for affirmative showing of reasonableness and specific evidence of reasonableness)

The Hartigan opinion pointed out that,

“The Commission is not merely an arbitrator between a utility seeking a rate increase and any parties who happen to oppose it. Rather, the Commission is an investigator and regulator of the utilities, and under section 30.1 it may not rely on intervening parties to contest a rate increase or to challenge the evidence offered by the utility. Nothing in the Public Utilities Act requires any party other than the Commission and the utility seeking a rate increase to participate in a ratemaking proceeding. Thus, any participation by persons or groups opposing an increase is voluntary and purely fortuitous.....Requiring intervenors to establish unreasonableness is therefore no substitute for requiring proof of reasonableness.”

Id. At 871.

Neither the People nor the Staff should be required to prove that these expense amounts are unreasonable just because the companies present them as part of their “wish list.” CIPS and UE have had ample opportunity to provide support for the pension and OPEB expense figures filed in their direct case. They have chosen not to do so. Consequently, the increase in operations and maintenance expense that those pension and OPEB figures represent should be disallowed.

ii. CIPS and UE have offered two sets of Pension and OPEB expenses and have provided nothing to demonstrate the reasonableness of either of them.

The pension and OPEB figures proposed by CIPS and UE for the test year are unsupported assertions made by the companies. They are not based on anything externally verifiable, such as an actuarial study. Instead, as CIPS and UE explained in their supplemental response to Staff Data Request CIPS-063(f), they are based on CIPS’ and UE’s estimate of their 2003 budget derived using “trends and forward looking conditions.” AG Ex. 1.1 at 11. Though CIPS and UE had ample opportunity to provide an explanation of these “trends and forward looking conditions” or supporting

documentation explaining how the 2003 pension and OPEB expenses they presented were calculated, they chose not to.

Instead, on Surrebuttal Testimony, CIPS and UE presented an entirely new set of pension and OPEB expense figures. These figures were also unsupported. No documentation or workpapers were provided to establish how the numbers were calculated, or how they were used to produce new revenue requirement figures also presented in CIPS/ UE's Surrebuttal Testimony.

b. In addition to being unsupported, the second set of pension and OPEB figures has additional problems: it is improperly introduced as surrebuttal testimony.

The pension and OPEB expense figures presented in CIPS/UE witness' Vogl's surrebuttal testimony should be ignored because this testimony is improperly filed as surrebuttal testimony since it is not responsive to the testimony of any other witness in this proceeding. The People have made a motion to strike the portion of Mr. Vogl's surrebuttal testimony that presents the new pension and OPEB figures, and the reference to it made in CIPS/UE witness Opich's Surrebuttal Testimony pending in this matter, and will not burden this brief with the same arguments that already have been made in that motion.

c. The record contains an erroneous reference to the pension and OPEB figures contained in CIPS' and UE's surrebuttal testimony.

i. The stated purpose of CIPS/UE witness Vogl's surrebuttal testimony is to disagree with Staff witness Jones suggestion regarding double counting.

According to CIPS/UE witness Vogl, the purpose of his Surrebuttal Testimony was, "to rebut the testimony of Illinois Commerce Commission Staff witness Burma Jones – specifically I will show that it would be inappropriate to accept Ms. Jones'

recommendation to disallow the pension and other post employment benefits (OPEB) costs incurred in implement the Voluntary Retirement Program (VRP).”

AmerenCIPS/UE Exhibit 30 at 2. In his surrebuttal testimony, Mr. Vogl describes why he disagrees with staff witness Jones’ testimony regarding double counting of VRP costs as follows,

“In fact, due to the requirement of FAS 87, FAS 88, and FAS 106 discussed in the previous answer, if the costs incurred to implement the VRP were not included, then most of the VRP costs would never be recovered. Therefore, no inconsistency of “double recognition” results by including both the pro forma test year pension and OPEB expense costs incurred to implement the VRP.”

AmerenCIPS/UE Exhibit 30 at 4. This response does not concede that there is an error in CIPS/UE’s adjustment, which could be corrected in order to address Staff witness Jones’ concern. Instead, Mr. Vogl clearly states, both in the description of the purpose of his testimony and in the testimony itself, that he disagrees with Staff Witness Jones’ testimony regarding double counting. Nor, significantly, does Mr. Vogl’s surrebuttal testimony announce that he is now presenting new figures in response to Ms. Jones’ double counting concerns. Since Mr. Vogl’s Surrebuttal Testimony explicitly sets forth his disagreement with Staff witness Jones’ position, the companies final position on the double counting issue is clear: CIPS/UE maintain that no double counting has occurred with respect to their pension and OPEB expense.

ii. CIPS/UE’s cross examination of Staff witness Jones regarding Mr. Vogl’s surrebuttal testimony improperly assumed a fact not in evidence.

Having explicitly stated in pre-filed testimony (AmerenCIPS/UE Ex. 30.0 at 4) and under cross-examination by the People (Tr. at 84) that CIPS/UE believed no double-counting had occurred with respect to its pension and OPEB expense, the companies then

proceeded to mislead a Staff witness into believing the opposite was true. Tr. at 435-436. The purpose of this deception can only be surmised, but the People maintain that it was done in an attempt to recast improper surrebuttal testimony as a wholly proper “response” to the double counting problem pointed out by Staff witness Jones, in an attempt to save that material from being stricken from the record. A description of this manipulation follows.

While cross-examining Staff witnesses Jones, counsel for the companies questioned her on the new budget figures presented on pages 5 through 7 of CIPS/UE witness Vogl’s testimony.⁴ At the outset, it should be noted that Ms. Jones was unable to provide answers for many of counsel’s questions because, as she noted, she had only just received answers to Staff discovery on its new budget figures four or five business days prior to her appearance at the hearings and had not had time to review that discovery. Tr. at 436

Nevertheless, despite Ms. Jones’ admission that she was unfamiliar with the basis for the companies’ new pension and OPEB figures, counsel for CIPS/UE proceeded to question her on those figures. One of his questions was particularly troubling, as it was premised on a fact not in evidence. Counsel asked Ms. Jones if she believed that the new figures corrected for the double counting error. She responded that, “she didn’t disagree that that’s what he did.” Tr. at 435.

The People now must ask the obvious question: How can there be a correction for an error that the companies maintain does not exist? CIPS/UE insistence that the new budget figures contained on pages 5-7 of Mr. Vogl’s surrebuttal testimony were a

⁴ This material is the subject of a pending oral Motion to Strike made by the People at the July 9th hearing, as well as having been the subject of the People’s Motion in Limine, filed with the ALJs on June 27, 2003.

response to Ms. Jones double counting issue belies the way in which they have attempted to recast that testimony as “responsive” rather than what the People have recognized ever since that material was filed: a totally new position introduced at the 11th hour, long after other parties would have a chance to review and analyze it. The companies’ own testimony demonstrates exactly what the People maintained in their Motion in Limine and again in their Motion to Strike: the new budget figures are not a response to Jones’ double counting error because the companies have repeatedly stated that there is no error.

Moreover, the companies’ position that no double counting error existed is further supported by the fact that Mr. Vogl, upon taking the stand and being given an opportunity to correct any errors in his testimony, stated that he had no corrections to make. If the new budget figures were truly responsive to Ms. Jones, why didn’t Mr. Vogl change the testimony he provided in which he disagreed with her position that the CIPS/UE adjustment represented double-counting? Why didn’t he change the testimony to restate the companies’ new position, i.e., “we acknowledge the double-counting error and now we will correct it”? Furthermore, the company’s answer to discovery questions about how the new budget figures were calculated does not indicate that Ms. Jones’ double counting concerns were considered. Instead, the adjustments are presented as an updated estimate that contains “assumption changes, VRP, and CILCO.” Staff Cross Ex. 1. Neither the interrogatory contained in the relevant data request nor the discovery response itself mentions anything about responding to Ms. Jones double counting concerns. Finally, where in the record does this so-called “correction” exist? CIPS/UE counsel did not refer to any specific correction in his cross-examination of Ms. Jones, nor did Mr. Vogl reference any correction on the stand.

Without explicit recognition by Mr. Vogl that the company wished to correct the double counting error and without evidence in the record reflecting that correction, the Commission lacks the evidentiary basis to find that the new budget figures are, in fact, a correction, rather than what they really are: a last-minute and wholly improper attempt to introduce brand new evidence.

This attempt to mislead a witness who testified she hadn't had an opportunity to examine the new budget figures must be recognized for what it is – an effort to transform late-filed supplemental direct testimony into rebuttal to a Staff adjustment, somewhat like Rapunzel spinning her hair into gold. The People hereby renew their Motion to Strike the material appearing on pages 5 through 7 of Mr. Vogl's surrebuttal testimony, appearing on lines 88 through 138.

iii. The AG is prejudiced by this error in the record because it appears to provide support in the record for the second set of pension and OPEB figures (provided in Mr. Vogl's surrebuttal) where, in fact, none exists.

CIPS and UE should not be allowed to benefit from this attempt to distort the record. If the record is not corrected to reflect the fact that Mr. Vogl's testimony neither agreed with or made changes in accordance with Staff Witness Jones' recommendation, then CIPS and UE have effectively changed the purpose of Mr. Vogl's Surrebuttal Testimony through cross examination tactics. The People would be prejudiced by this shifted purpose because it would allow support in the record for CIPS' and UE's previously unsupported pension and OPEB figures.

6. Pension and benefits, capitalization ratios

a. CIPS/UE can not explain why the pension and labor capitalization rates are different.

CIPS and UE propose to capitalize a far lower amount of pension expense than labor expense. This lower capitalization rate for pension is inappropriate because pension and labor are very similar expenses: they are both employee compensation. Consequently, absent some rational explanation, pension and labor should utilize similar capitalization ratios. The difference between the pension and labor capitalization rates presented by CIPS and UE is not small. For UE, the labor capitalization ratio is nearly ten times the pension ratio. For CIPS, the labor ratio is more than 100 times the pension ratio. AG Exhibit 1.1 at 14. CIPS and UE could not explain why there was such a large difference between the pension and labor capitalization ratio. Tr. at 286-287. CIPS and UE did agree that the .25 capitalization ratio it used for pensions was not the only rate that could have been appropriate under Generally Accepted Accounting Principles. Tr. at 319. Since CIPS and UE have not offered any explanation why the labor capitalization ratios are so much greater than the pension capitalization ratios, a more reasonable approach to determining the appropriate capitalization ratios is necessary. The People's witness presented such an approach in his direct testimony. He suggested calculating the capitalization ratio used for labor and using it as a proxy for the capitalization ratio to be used for pension and OPEB. AG Ex. 1.1 at 14. This calculation methodology ensures the capitalization ratios are grounded in each company's actual costs rather than being based on forecasts and projections.

b. CIPS/UE improperly propose to calculate capitalization ratios on a quarterly basis.

CIPS and UE explained that the pension capitalization ratio was derived by tying it to quarterly forecasts and projections of labor capitalization and labor costs. This methodology is not appropriate because it calculates capitalization ratios for each quarter of a given year. CIPS/UE Ex. 27.0 at 8. Calculating quarterly expenses in this manner introduces the concept of a “test quarter” which is not contemplated within the Commission’s test year rule. 83 Ill. Adm. Code 285.150. Expenses calculated quarterly represent too narrow a slice of the conditions under which the companies operate to be useful in determining rates.

7. Wage expense, 2003 collective bargaining unit increase

8. Incentive compensation plan expenses

CIPS/UE’s proposed test year expenses include incentive program costs that are inappropriate for the companies to recover from rate payers because the incentive program benefits shareholders, not ratepayers, and because the costs are hypothetical, and may not actually be paid. The People recommend that these costs be removed from CIPS/UE’s expenses.

CIPS and UE’s sister company, Central Illinois Light Company (“CILCO”), in a recent delivery service tariff rate case order, had the recovery of their incentive plan payments in the 2000 test year specifically disallowed. ICC Docket 01-0465, 01-0530, 01-637 (cons.), Order at 59, (Mar. 28, 2002). This Order stated that: (1) the payment may not be incurred; (2) the performance goals of the 2000 plan benefited shareholders rather than ratepayers; and (3) the plan could be discontinued at any time. These same problems are presented in CIPS/UE’s incentive compensation plan and should prevent

the Commission from allowing recovery of CIPS/UE's proposed incentive compensation plan expenses in this rate case as well.

9. Advertising expense

10. Meter reading expense, non-labor

UE incurred expenses related to transition to a new billing system during the test year. AG Cross Ex. 4. UE seeks to build these costs into rates so they will be recovered every year, despite the fact that the transition related costs that occurred during the test year will cease after the transition is completed. The People recommend that \$81,000 of the \$181,000 cost that UE proposes for meter reading be removed from rate test year expenses because these costs will not recur when the transition to the new billing system is completed. Since the transition to the new billing system began in 1999, (AG Cross Ex. 4) it is reasonable to assume that transition related costs will not be incurred after the test year.

11. Income tax expense

12. Allocation of rate case expense

Despite the fact that CIPS is more than nine times larger than UE in terms of number of customers, (CIPS Ex. 2.0 at 2; UE Ex. 2.0 at 2) and is seeking a rate increase greater than four times the increase sought by UE, (CIPS Ex. 1.0 at 3; UE Ex. 1.0 at 3) CIPS and UE propose to split the costs of this rate case evenly. Such an allocation of rate case expenses would result in UE customers shouldering a disproportionate share of rate case expenses. Tr. at 290.

The People recommend that, rather than splitting the rate case expenses in half, they should be allocated between CIPS and UE based on the size of each company.

There is no reason to impose larger rate costs on UE customers just because UE happens to be a smaller company. The allocation of rate case costs proposed by the People takes into consideration the sizes of CIPS and UE and distributes the rate case costs accordingly so that no customer group is unfairly burdened with them. As CIPS/UE witness Opich testified under cross-examination by Judge Albers, in CIPS/UE's last rate case, the allocation of rate case costs between CIPS and UE was based on the revenue of the companies, rather than half-and-half. Tr. at 308.

CIPS and UE have offered no reason why the Commission should break from its practice of allocating rate cases expenses among CIPS and UE based on their revenues. Consequently, the People's recommendations that rate case expenses be allocated based on the size of each company should be adopted.

13. Amortization of rate case expense

a. The rate case expense should be amortized over five years.

CIPS and UE propose that the costs of this rate case be amortized over three years. A three-year amortization of these costs would be appropriate if CIPS and UE were likely to bring another rate case after three years. However, if history is any guide, the companies will wait longer than three years to bring their next rate case. Both CIPS and UE filed their last rate cases five years ago, in 1998. CIPS' waited seven years and UE waited fifteen years before filing their 1998 rate cases.⁵ Consequently, the Commission should reject CIPS/UE's request for a three-year amortization period and adopt a five-year period instead.

⁵ See ICC Docket 98-0546, Order at 1, 1999 Ill. PUC LEXIS 186, February 18, 1999; ICC Docket 98-0545, Order at 1, 1999 Ill. PUC LEXIS 185, February 18, 1999; ICC Docket 91-0193, Order at 1, 1992 Ill. PUC LEXIS 81, March 18, 1992; ICC Docket 98-0546 Order at 4, 1999 Ill. PUC LEXIS 186, February 18, 1999.

b. CIPS/UE's alternate proposal for a commitment to include unamortized rate case cost balances in future rate cases should be rejected.

The People further oppose CIPS' and UE's request for a commitment, in this docket, that CIPS and UE can include in future rate cases any unamortized balance related to rate case expenses. This proposal is one-sided in that, as the People's witness pointed out in his rebuttal testimony, CIPS/UE are not offering to refund to customers any over collection of rate costs if their next rate change takes place after the amortization of rate case costs from this rate case is complete. AG Ex. 1.1 at 10.

Second, ratemaking is based on the premise that the utility must manage its revenues to account for expenses that increase and decrease between rate cases. Sometimes, the Company will attain a higher than expected return or profit, and sometimes the Company will attain a lower than expected return or profit. "Ratemaking therefore considers costs and earnings in the aggregate because potential changes in one or more items may be offset by changes in other items." A. Finkl & Sons Co. v. Illinois Commerce Comm'n, 250 Ill.App.3d 317, 325, 189 Ill.Dec. 824, 830, 620 N.E.2d 1141, 1147 (1993), appeal denied, 153 Ill.2d 557, 191 Ill.Dec. 616, 624 N.E.2d 804 (1993), cited in City of Chicago v. Illinois Commerce Commission, 124 Ill.2d at 200, 124 Ill.Dec. at 531, 529 N.E.2d at 512 (1995). CIPS' and UE's request to treat one minor cost item outside the test year would unfairly isolate one item in an overall rate proceeding, and violate the prohibition on single-issue ratemaking. "The prohibition against single-issue ratemaking requires that, in a general base rate proceeding, the Commission must examine all elements of the revenue requirement formula to determine the interaction and overall impact any change will have on the utility's revenue requirement, including its return on investment." Citizens Utility Board v. Illinois Commerce Commission, 166

Ill.2d 111, 136-137, 651 N.E.2d at 1089, 1102 (1995). Essentially, CIPS and UE are requesting a promise, in advance, that they can avoid the test year principles and violate the prohibition against single-issue ratemaking in connection with rate case expenses. The Commission should reject this invitation.

D. Recommended Operating Income/Revenue Requirement

IV. Cost of Capital/Rate of Return

A. Capital Structure

- 1. Uncontested Issues**
- 2. AmerenUE, common equity percentage**
- 3. Short-term debt balance**
- 4. Recommended capital structure**

B. Cost of Debt

- 1. Cost of long-term debt**
- 2. Cost of short-term debt**

C. Cost of Preferred Stock

D. Cost of Common Equity

E. Recommended Overall Rate of Return on Rate Base

V. Cost of Service Study

A. Introduction

B. Uncontested Issues

C. Contested Issues

- 1. Allocation of Transmission Plant**
- 2. Allocation of Distribution Plant**
- 3. Allocation of Account 383**

- 4. Allocation of Account 386**
- 5. Allocation of Account 879**
- 6. Allocation of Account 902**
- 7. Allocation of Account 912-916**
- 8. Allocation of Storage costs between sales and transportation customers**
- 9. Allocation of revenue requirement**

VI. Rate Design; Tariff Terms and Conditions

A. Introduction

B. Uncontested Issues

C. Contested Issues

- 1. Residential Customer Charge**
- 2. Residential Usage Charge, flat vs. declining block**
- 3. Size of Residential First Block**
- 4. Grain Dryer Rate**
- 5. Elimination of Interruptible Service**
- 6. Reduce restrictions on access to Interruptible Service**
- 7. Elimination of minimum monthly charges**
- 8. Group Balancing Service**
- 9. Bank balance withdrawal limit**
- 10. 80% of daily usage transport requirement**
- 11. Cash-out mechanism for transportation customers**
- 12. 15-Day requirement for New Services**

CONCLUSION

Therefore, for the reasons stated above, the People of the State of Illinois request that the Commission make the adjustments recommended herein and reduce the rate increases requested by CIPS and UE by no less than the amounts discussed above.

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Respectfully submitted,

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